TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19~~60~~

No. ~~509~~ 14

HAROLD BECK KESLER, APPELLANT,

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

FILED NOVEMBER 23, 1960
PROBABLE JURISDICTION NOTED JANUARY 16, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 539

HAROLD BECK KESLER, APPELLANT,

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

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[fol. 1]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

No. B-143-59

In the Matter of

HAROLD BECK KESLER, Bankrupt.

PETITION—Filed March 17, 1960.

The petition of Harold Beck Kesler, respectfully shows to the court:

1. That he is the bankrupt, above named, and that he duly scheduled in this bankruptcy proceeding certain judgments against the petitioner and in favor the Max L. Morley, guardian ad litem for Patricia Jo Morley and Janice Lee Morley, minors, and Alfred Leon, guardian ad litem for Elisa Ruth Leon, minor, herein collectively referred to as the judgment creditors; which said judgments were made and entered in the District Court of Salt Lake County on or about June 21, 1957, aggregating $6,523.04; and that the judgments arose out of the alleged negligent operation by the petitioner of an automobile, which caused injuries to the minor children named above; that said claims were provable claims and were discharged in bankruptcy on December 31, 1959.

2. That the judgment creditors, above named, acting pursuant to section 41-12-13, Utah Code Annotated, 1953, requested the clerk of the said District Court of Salt Lake County to forward to the Department of Public Safety of the State of Utah certified copies of the said judgments against the petitioner. Thereupon, in accordance with section 41-12-14, Utah Code Annotated, 1953, the said Depart-

ment of Public Safety suspended the petitioner's license to operate motor vehicles in the State of Utah and suspended the registration of his motor vehicle.

3. That the petitioner was engaged in operating a one-man automobile repair business at the time of filing his petition in bankruptcy and had been so engaged for several years prior thereto; that in connection with his said business it frequently became necessary for the petitioner to road-test vehicles which are left for repair; that the petitioner is qualified to work only as a motor vehicle repair-[fol. 2] man and the suspension of his license seriously impairs his ability to make a living.

4. After the petitioner was discharged in bankruptcy he made a written demand upon the said Department of Public Safety for the revocation of the said suspension of his operator's license and motor vehicle registration. The revocation of such suspension was declined by the Department of Safety acting by and through Jay C. Newman, Commissioner of Public Safety, and Ralph W. Westwood, Director of Financial Responsibility Division; that the Department of Public Safety and the Commissioner and other officer thereof, in declining to revoke said suspension acted in accordance with section 41-12-15, Utah Code Annotated, 1953, which provides, "a discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act." Copies of pertinent statutes are attached.

5. Sections 41-12-13, 41-12-14 and 41-12-15, Utah Code Annotated, 1953, are unconstitutional and void for the reason that they, and each of them, conflict with Section 17 of the Bankruptcy Act, 11 U.S.C.A., section 35, passed by the Congress of the United States pursuant to the grant of power contained in Article I, Section 8 of the Constitution of the United States.

6. Unless the said Jay C. Newman and Ralph W. Westwood, acting for and on behalf of the Department of Public Safety of the State of Utah, are restrained and enjoined from enforcing the said unconstitutional sections of the

Motor Vehicle Act of the State of Utah, they will continue to hold the petitioner's said operator's license and registration in a suspended status during his lifetime and will thereby deny the petitioner the benefits of the Bankruptcy Act with the result that the petitioner's ability to make a living will be seriously impaired.

Wherefore, your petitioner prays that an order to show cause be issued requiring the said Jay C. Newman, Commissioner of Public Safety of the State of Utah, and Ralph W. Westwood, Director of Financial Responsibility Division of the Department of Public Safety of the State of [fol. 3] Utah, to appear at a time certain and show cause, if any they have, why said sections 41-12-13, 41-12-14 and 41-12-15, Utah Code Annotated, 1953, should not be declared unconstitutional and void and why they, and each of them, acting as such officers, should not forthwith revoke the suspension of the petitioner's said operator's license and registration and return the appropriate documents to him. The petitioner further prays that this matter be referred to a three-judge court for hearing as provided by Title 28, U.S.C.A. sections 2281 and 2284. Petitioner prays for general relief.

Harold Beck Kesler, Petitioner.

E. J. Skeen, Attorney for Petitioner, 522 Newhouse Building, Salt Lake City 11, Utah.

Duly sworn to by Harold Beck Kesler, jurat omitted in printing.

[fol. 4]

Attachment to Petition

Pertinent Sections of Motor Vehicle Act

Title 41, Chapter 12

Utah Code Annotated, 1953

41-12-1

The following words and phrases, when used in this act, shall, for the purposes of this act, have the meaning respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Commission," the department of public safety.

(b) "Department," the division of safety and financial responsibility of the department of public safety.

(c) "Judgment," Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(d) "License," Any license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(e) "Motor vehicle," Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers) and every vehicle which

is propelled by electric power obtained from overhead wires but not operated upon rails.

(f) "Nonresident," Every person who is not a resident of this state.

(g) "Nonresident's operating privilege," The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

[fol. 5] (h) "Owner," A person who holds a legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

(i) "Operator," Every person who is in actual physical control of a motor vehicle.

(j) "Person," Every natural person, firm copartnership, association or corporation.

(k) "Proof of financial responsibility," Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of $5,000 because of bodily injury to or death of one person, in any one accident, and, subject to said limit for one person, in the amount of $10,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of $1,000 because of injury to or destruction of property of others in any one accident.

(l) "Registration," Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

(m) "State," Any state, territory or possession of the United States, the District of Columbia, or any province of the dominion of Canada.

41-12-13

Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment.

[fol. 6] If the judgment debtor named in any certified copy of a judgment reported to the commission is a nonresident, the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the judgment debtor is a resident.

41-12-14

(a) The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility.

41-12-15

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act.

[fol. 7] 41-12-17

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The commission shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commission shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied as provided in this act.

[fol. 8] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

[Title omitted]

ANSWER—Filed June 27, 1960

Comes now the Department of Public Safety, Financial Responsibility Division of the State of Utah, by and through its attorneys, the Attorney General of the State of Utah and Assistant Attorney General Gordon A. Madsen, and in answer to petitioner's petition, admits, denies and alleges as follows:

1. Admits the allegations of paragraphs 1, 2, and 4 of the petition.

2. It is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 of the petition, and therefore denies the same.

3. Denies the allegations of paragraphs 5 and 6 of the petition, and the whole thereof.

Wherefore, respondent prays that the permanent injunction requested by petitioner be denied and the petition be dismissed. That, further, this Court hold that the provisions of Sections 41-12-13, 41-12-14 and 41-12-15, U.C.A. 1953, are constitutional and in full force and effect.

Dated this 27th day of June, 1960.

Walter L. Budge, Attorney General, Gordon A. Madsen, Assistant Attorney General, Attorneys for Respondent.

[fol. 9] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

[Title omitted]

STIPULATION OF FACTS—Filed August 12, 1960

It Is Stipulated by and between counsel for the bankrupt, above named, and counsel for J. C. Newman and Ralph W. Westwood, acting for and on behalf of the Department of Public Safety of the State of Utah, that the following are the facts upon which this case may be decided by the Court:

1. That the bankrupt duly scheduled in his bankruptcy proceeding certain judgments against the petitioner and in favor of Max L. Morley, guardian ad litem for Patricia Jo Morley and Janice Lee Morley, minors, and Alfred Leon, guardian ad litem for Elisa Ruth Leon, minor, herein collectively referred to as the judgment creditors; which said judgments were made and entered in the District Court of Salt Lake County on or about June 21, 1957, aggregating $6,523.04; and that the judgments arose out of the alleged negligent operation by the petitioner of an automobile, which caused injuries to the minor children above named; that said claims were provable claims and were discharged in bankruptcy on December 31, 1959.

2. That the judgment creditors, above named, acting pursuant to Section 41-12-13, Utah Code Annotated, 1953, requested the clerk of the said District Court of Salt Lake County to forward to the Department of Public Safety of the State of Utah certified copies of the said judgments against the petitioner. Thereupon, in accordance with Section 41-12-14, Utah Code Annotated, 1953, the said Department of Public Safety suspended the petitioner's license to operate motor vehicles in the State of Utah and suspended the registration of his motor vehicle.

[fol. 10] 3. That the petitioner was engaged in operating a one-man automobile repair business at the time of filing his petition in bankruptcy and had been so engaged for several years prior thereto; that in connection with his said business it frequently became necessary for the petitioner to road-test vehicles which are left for repair; that the petitioner is qualified to work only as a motor vehicle repairman and the suspension of his license seriously impairs his ability to make a living.

4. After the petitioner was discharged in bankruptcy he made a written demand upon the said Department of Public Safety for the revocation of the said suspension of his operator's license and motor vehicle registration. The revocation of such suspension was declined by the Department of Safety acting by and through Jay C. Newman, Commissioner of Public Safety, and Ralph W. Westwood, Director of Financial Responsibility Division; that the Department of Public Safety and the Commissioner and other officer thereof, in declining to revoke said suspension acted in accordance with Section 41-12-15, Utah Code Annotated, 1953, which provides, "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act."

5. The judgments which gave rise to the suspension of the bankrupt's driver's license and registration were the result of a jury trial which lasted four days in the District Court of Salt Lake County. The judgments were appealed to the Supreme Court on issues between the bankrupt and a co-defendant of the bankrupt. The decision was affirmed.

6. The bankrupt listed in his schedules in bankruptcy only two creditors in addition to the judgment creditors referred to above. The additional parties were C. Richard Hendricksen, who was the petitioner's attorney in defense of the negligence action, whose bill was $290.00, and Freed Finance Company of Salt Lake City, whose claim was $502.25. Both debts were discharged.

[fol. 11] In admitting the truth of the statements contained in the preceding two paragraphs, the bankrupt does not admit the materiality of the facts therein stated.

Dated this 18 day of July, 1960.

E. J. Skeen, Attorney for Bankrupt.

Gordon A. Madsen, Attorney for J. C. Newman, Commissioner of Public Safety, Ralph W. Westwood, Director of the Financial Responsibility Division and the State of Utah.

[fol. 12] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

No. B-143-59

In the Matter of

HAROLD BECK KESLER, Bankrupt.

DECISION AND JUDGMENT—August 30, 1960

Before Pickett, Circuit Judge, and Christenson and Chilson, District Judges.

E. J. Skeen, Esq., of Skeen & Skeen, Salt Lake City, Utah, for Bankrupt.

Gordon A. Madsen, Esq., Assistant Attorney General of the State of Utah (Walter L. Budge, Esq., Attorney General of the State of Utah, with him on the brief) for respondent Department of Public Safety, Financial Responsibility Division, State of Utah.

Christenson, District Judge.

The bankrupt was duly discharged from liability on a properly scheduled judgment for personal injuries sus-

tained by the creditor as a result of the bankrupt's adjudicated negligence in the operation of an automobile. Notwithstanding such discharge, his motor vehicle registration and operator's license are under suspension pursuant to the terms of the Utah Motor Vehicle Safety Responsibility Act[1] for non-payment of the judgment. Contending that provisions of the State law[2] authorizing such suspension are

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[1] Chapter 12, Title 41, Utah Code Annotated, 1953 (41-12-1 et seq., UCA 1953).

[2] The Utah Safety Responsibility Act contains inter alia, the following provisions:

§13 Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment.

If the judgment debtor named in any certified copy of a judgment reported to the commission is a nonresident the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certification of the state of which the judgment debtor is a resident.

§14 (a) The commission, upon the receipt of the certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility.

§15 Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued

[fol. 13] unconstitutional[3] and void because they conflict with Section 17 of the Bankruptcy Act,[4] the bankrupt, as [fol. 14] petitioner, has brought this three judge court proceeding[5] in an attempt to compel restoration by state authority of his driving privileges.

On June 21, 1957, Judgments were entered in a State Court for a total of $6,523.04 against Kesler and in favor of the guardians ad litem of certain minors.[6] These constituted provable claims which were discharged in bankruptcy on December 31, 1959. In the meantime, the judgment creditors, acting pursuant to Section 41-12-13 (quoted in the margin) requested the Clerk of the State Court to forward to the Department of Public Safety of the State of

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in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act.

[3] Under the due process clause of the Fourteenth Amendment to the Constitution of the United States and in view of Section 8, Clause 4, Ibid., authorizing the Congress to establish uniform Rules on the subject of Bankruptcies throughout the United States. "The national purpose to establish uniformity necessarily excludes State regulation. States may not pass or enforce laws to interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations." International Shoe Co. v. Pinkus, 49 S. Ct. 108, 278 U.S. 261, 73 L.Ed. 318.

[4] Section 17 of the Bankruptcy Act, 11 USCA 35, provides:

"(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in in part, except . . ." (exceptions not applicable).

[5] Invoking the provisions of 28 USCA § 2281.

[6] Max L. Morley, guardian ad litem for Patricia Jo Morley and Janice Lee Morley, minors, and Alfred Leon, guardian ad litem for Elisa Ruth Leon, minor, v. Harold Beck Kesler, in The District Court of the Third Judicial District of the State of Utah in and for Salt Lake County.

Utah certified copies of the Judgment. Whereupon, in accordance with the State law, the Department of Public Safety suspended the petitioner's license to operate a motor vehicle in the State of Utah and suspended the registration of his motor vehicle. The operator of a one-man automobile repair business, he has been greatly handicapped in the making of a living by the action of the State.

He prays that the provisions of the law relied upon by the State be declared void, and that designated officers of the Department of Public Safety of the State of Utah be required to reinstate his suspended rights, or that he be granted other appropriate relief.

The respondent, Department of Public Safety (Financial Responsibility Division) of the State of Utah, conceding [fol. 15] that this court has jurisdiction over the matters in issue and is empowered to determine the validity of the act as against respondent's attack, contends that it constitutes a valid exercise of the police power not in conflict with Section 17 of the bankruptcy act.

It must be recognized that automobile financial responsibility acts, which by now are common in the majority of states of the United States, have been rather consistently upheld against constitutional and other objections.[1] This has been on the theory that the State, in the exercise of its police power, may reasonably regulate the use of its highways, with the objective, among others, of minimizing the hardship flowing from the financial irresponsibility of users involved in accidents, Berberian v. Lussier (RI 1958), 139 A.2d 869; DeVries v. Alger (Mich. 1950), 44 N.W.2d 872.

In Reitz v. Mealey,[2] the United States Supreme Court declared that any appropriate means adopted by a State to insure competence and care on the part of its licensees and to protect others using its highways is consistent with due process of law. It determined that a New York statute

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[1] Anno.: Validity of Motor Vehicle Financial Responsibility Act, 35 ALR 2d 1011.

[2] 314 US 33, 62 S.Ct. 24, 86 L.Ed. 21 (1941). See also the decision of the three judge court from which the appeal was taken, D.C. N.D., New York, 1940, 34 F.Supp. 532.

providing for the suspension of an operator's license for three years if a judgment against him resulting from the negligent operation of a motor vehicle was not paid or discharged other than through bankruptcy, was valid and enforceable. In 1936 and 1939 certain amendments to the [fol. 16] act so sustained had been adopted, which gave the creditor control over the restoration of a debtor's license and its continued force during the three year suspension period and made it the duty of the county clerk to certify a judgment only on written demand of the judgment creditor or his attorney. The Supreme Court, however, declined to pass upon the validity of these amendments, holding that the district court had properly thus abstained on the ground that under New York law a statute in itself constitutional would not be affected by an unconstitutional amendment. Petitioner says that the question avoided in Reitz v. Mealey is squarely presented here.

Petitioner's reliance is almost wholly upon Reitz v. Mealey; indeed, that decision necessarily must constitute the base and meridian of our survey of the applicable law since it represents the latest, in fact the only, authoritative and pertinent case that has been called to our attention or that we have been able to find.* Reitz in effect lays down these propositions which we need not redebate with reference to cases like the one before us: (1) Without creditor controls, automobile financial responsibility laws such as Utah's would be both a legitimate exercise of the police power and consistent with the bankruptcy act; (2) If provisions of the act under attack are severable from its clearly valid provisions so that the court reasonably can say that the legislature intended the latter to stand despite the [fol. 17] possible invalidity of the challenged provisions, and if under the unchallenged provisions the petitioner would be entitled to no relief, the court should not declare

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*The State relies strongly upon DeVries v. Alger, supra, 44 N.W.2d 872. It must be observed, however, that the Michigan statute there involved (Act 203, 1933, Compiled Laws Michigan, 1948, Secs. 256.251 et seq.) does not contain creditor control provisions relating to the suspension of privileges (Sec. 256.253) although it does permit their restoration under specified conditions with the consent of the creditor (Sec. 256.254).

the act unconstitutional or invalid; and (3) If the facts do not invoke the operation of a challenged provision of the act, it being severable, the court should not pass upon its validity.

Despite some variation in expressions, we perceive no significant difference between the creditor controls of the Utah statute and of the New York amendments. Without these creditor controls the Utah statute clearly would be valid. Are they severable from the other provisions of the statute under which the petitioner's driving rights were suspended, in view of the separability clause set out in the Utah act?[10] This problem too should be decided in view of state law, as the Supreme Court in Reitz and in Meyer v. Wells Fargo & Co.,[11] indicated.

In Utah it is recognized that severability or separability, where part of a statute is unconstitutional, is a matter primarily of legislative intent.[12] The test, fundamentally, is whether the legislature would have passed the statute with- [fol. 18] out the objectionable part, or whether the parts are so dependent upon each other that the court should conclude that the intent was that the statute be effective only in its entirety.[13] The courts may be aided in the determination of legislative intent by the inclusion within a statute of a saving clause, which will create a presumption of

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[10] Section 41-12-40 of the act reads:

"Separability clause—If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts hereof would be declared unconstitutional."

[11] 223 U.S. 298; 32 S.Ct. 218; 56 L.Ed. 445.

[12] *State* v. *Ledbine* (1956), 5 Utah2d 422, 303 P.2d 1099. *Union Trust Co.* v. *Simmons* (1949), 116 Utah 422, 211 P.2d 190. *Smith* v. *Carbon County* (1938), 95 Utah 340, 81 P.2d 370.

[13] *State* v. *Ledbine*, supra (1956), 5 Utah2d 422, 303 P.2d 1099. *Union Trust Co.* v. *Simmons*, supra (1949), 116 Utah 422, 211 P.2d 190. *Thomas* v. *Daughters of Utah Pioneers* (1948), 114 Utah 108, 197 P.2d 477. *North Tintic Mining Co.* v. *Crockett* (1929), 75 Utah 259, 284 P. 328. *State* v. *Barker* (1917), 50 Utah 189, 167 P. 262.

separability.[14] But this presumption is not controlling if it is recognizable that the legislature would not have enacted the remaining provisions alone, or that standing alone they would not provide for an operative whole.[15] In Reitz, supra, the Supreme Court was of the view on principles similar to those recognized in the Utah decisions[16] that the questioned provisions were separable from the original statute. The prevailing opinion stated on this point:

> "There is no evidence of intent that if the amendments could not stand the legislation as a whole should fail. On the contrary, the legislative history discloses a persistent purpose that such a scheme for the control of motor drivers should remain. Successive and frequent amendments have dealt with details but have left intact the major features of the legislation. In any case, we should accord great weight to the District Court's view of New York law. But an examination of the authorities convinces that in this case any contrary view is untenable."

With respect to the amendment giving the creditor con- [fol. 19] trol over the restoration of the operator's privileges prior to satisfaction of the judgment in full, we believe that we are bound by the Supreme Court's view that a justiciable question would arise only if the creditor were shown to have invoked the provision by consenting to the renewal.[17] How this question ever would be raised,

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[14] *Tygesen* v. *Magna Water Co.* (1950), 119 Utah 274, 226 P.2d 127. *Patterick* v. *Carbon Water Conservancy Dist.* (1944), 106 Utah 55, 145 P.2d 503.

[15] *State* v. *Roberts* (1937), 92 Utah 204, 66 P.2d 892. *State* v. *Barker*, supra (1917), 50 Utah 189, 167 P. 262.

[16] See *State* v. *Barker*, supra (1917), 50 Utah 189, 167 P. 262.

[17] It is stated (p. 28 of 314 U.S.) on this point:

"Since the judgment in this case would or should have been certified prior to the amendment of 1939 and since the creditor has not sought to invoke the amendment of 1936 which gives him a control over the restoration of appellant's license and its continued force during the three year suspension pe-

with the creditor not likely to do so if he has consented to the restoration and the debtor not willing to, is not clear to us as a practical matter, but we must follow the higher court in thus straining to avoid the constitutional issue. At least we have looked at these restoration provisions as background on legislative intent in connection with the other provisions of the law that are open to question before us. These other provisions relate to the control of the creditor in bringing about the suspension in the first instance. Unlike the situation in Reitz, we do not believe that we can or should avoid the testing of the latter problem here.

The New York statute, disregarding the amendments, made it the duty of the county clerk to certify to the Commissioner of Motor Vehicles any judgment of the kind involved here which had become final and remained unsatisfied for fifteen days. The Supreme Court said:

> "It is true that the bill alleges the Judgment in this case was certified at the request of the plaintiff's attor- [fol. 20] ney, but if the amendment is void because it confers a power on the creditor inconsistent with the effect of the debtor's discharge, and is eliminated from the statute for that reason, it still remains that under the old law the county clerk's duty to certify was mandatory, and this judgment would have been certified if he had performed his official duty."

The Utah statute, sec. 41-12-13 provides in language similar to that of the 1939 amendment in New York that whenever any person fails within 60 days to satisfy any judgment, "upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of court . . . to forward to the commission immediately after the expiration of said 60 days a certified copy of such judgment." Section 41-12-14 says that, "The commission, upon the receipt of a certified copy of a judgment, shall

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riod, we think the court was right in abstaining from deciding whether the amendments are annulled by § 17 of the bankruptcy act."

forthwith suspend the license and registration . . ." The real difference, if the challenged creditor control is to be disregarded, is that under the original New York Act there was provision for the mandatory forwarding of the judgment and there would be no such provision in the Utah law if the creditor controls in Section 41-12-13 were disregarded.

The Utah statute does provide that "the Commission, upon receipt of a certified copy of the judgment, shall forthwith suspend the license and registration . . ." It may be argued that this provision can stand alone to authorize the action of the Commission, notwithstanding how or upon whose action a certified copy may come into its possession. But this seems too haphazard a system upon which to justify the exercise of the police power, even in view of the separability clause. No provision is made in the Utah law for forwarding the judgment for action by the Commission except on motion of the creditor. The clerk has no duty [fol. 21] to act in the absence of the creditor's request.[18] It seems inescapable under these circumstances that we view the provision for the forwarding by the creditor of a certified copy of the judgment and the provision for the suspension of the operator's privileges upon the Commission's receipt of such judgment as essential parts and parcels of the same system. To judicially excise the one from the other would leave the surviving part a detached and meaningless member bearing no reasonable relationship to the exercise of the police power.

Regarding the provision under attack as inseparable from the provisions authorizing action by the commission, we thus are confronted with the specific problem which the Supreme Court in Reitz found it unnecessary to decide: Does the fact that the judgment creditor must invoke the

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[18] Contrast the New York Statute, of which the Supreme Court observed (p. 38 of 314 U.S.): "But if the amendment is void because it confers a power on the creditor inconsistent with the effect of the debtor's discharge, it still remains that under the old law the county clerk's duty to certify was mandatory, and this judgment would have been certified if he had performed his official duty."

operation of the act by forwarding or causing to be forwarded a certified copy of the judgment, render the act unconstitutional or in contravention of section 17 of the bankruptcy act? We have concluded that this question must be answered in the negative, with the result that the bankrupt's petition should be denied.

We are not unmindful that four of the Justices of the Supreme Court as then constituted held a contrary view,[19] [fol. 22] and that comments in the prevailing opinion indicated that there might be some merit in the argument now made by the petitioner.[20]

But the very basis of the prevailing opinion—that of abstention from deciding the point—commends that we refrain from reading anything into the decision inconsistent with the proposition that the lower court and the Supreme Court did not decide the point directly or indirectly.

We must accept the proposition which was directly decided in Reitz, that a system involving the mandatory forwarding by the clerk of unsatisfied judgments for action by the commission against the operating privileges of the judgment debtor is sustainable. On the latter point the Supreme Court said:

> "Second. Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also, the licensee furnished proof

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[19] Summarized Mr. Justice Douglas in the dissenting opinion (p. 43 of 314 U.S.): "In short, this power which New York has given the creditor is a powerful collection device which should not be allowed to survive bankruptcy."

[20] P. 38 of 314 U.S.: "A more serious question arises in connection with § 17 of the bankruptcy act. The discharge of the debtor is a defense available against a suit on the judgment and against execution process issued upon it. And there is force in the argument that § 94-b, as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the State or makes that public policy subservient to the private interest of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim."

of his ability to respond in damages for any future accident.

"If the statute went no further, we are clear that it would constitute a valid exercise of the state's police power not inconsistent with § 17 of the bankruptcy act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of vol- [fol. 23] untary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety." [11]

We do not regard as of critical significance the fact that the Utah statute provides for an indefinite suspension in the absence of settlement of the judgment, whereas the New York statute was limited in operation to three years.[12] Hence, the Utah statute (insofar as we are required to pass upon it) would be valid, aside from its provision that copies of unexecuted judgments, necessary as foundations for action by the commission, must be forwarded at the

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[11] P. 37 of 314 U.S.

[12] The New York statute directed the commission to suspend the license for three years unless, in the meantime, the judgment were satisfied or discharged, except by a discharge in bankruptcy. However, the suspension would continue after the expiration of the three years or satisfaction of the judgment, until the licensee gave proof of his ability to respond in damages by the procurement of insurance, the giving of a bond, or the posting of a deposit. The Utah statute provides that upon payment of the judgment to the amount of the required insurance ($5,000 bodily injury to or death of one person, $10,000 for more than one, and $1,000 property damage), the driving privileges may be restored upon the furnishing of proof of financial responsibility. Utah Code Annotated, 1953, 41-12-1; 41-12-16.

request of the judgment creditor. Does this point render the act invalid? It seems a somewhat frail one upon which to rest a finding of unconstitutionality, although entirely sufficient if it be established that its basis and justification are the coercion of bankrupts into the payment of discharged debts.

Despite proper distrust of the police power as an instrument or occasion for private action, examples may be cited of the necessity and effectiveness of action by injured [fol. 24] parties in setting in motion a system for the public's protection. Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make complaints before committing magistrates. Unless they do so, ordinarily criminal prosecution, especially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirement in the act in question that the creditor initiate the process of suspension.

If the forwarding of judgments, remaining unsatisfied for some period, were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. As a practical matter, the view reasonably could be entertained that the forwarding of copies of unsatisfied judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within the legitimate objectives of the police power.[23] There might be differences of opinion as to the

[23] Another provision of the law not now under attack (41-12-15 Utah Code Annotated, 1953) provides that as to the more serious automobile accidents, prior to the entry of any judgment, but upon the basis of a statutory accident report, unless there is evidence that the operators involved have been released from liability, their operating privileges are to be suspended until they furnish specified security, but only if an injured party has submitted evidence of his damages to the commission. The incorporated creditor control also seems primarily for the benefit of the prospective debtor and points up the hardship that might unnecessarily result to him if the suspension were automatic.

means best calculated to carry out the legitimate purposes of the act with due regard to the rights and convenience [fol. 25] of the parties involved. It is not the problem of the court to resolve these reasonable differences. Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do so. The power to declare legislative enactments unconstitutional should be exercised with extreme caution.[24] The court cannot assume that state legislative enactments are adopted arbitrarily or without good reason to further some legitimate policy of the state.[25] Highway regulations enacted by a state carry a strong presumption of validity when challenged in court.[26]

It is our judgment that the petition should be denied, and it is so ordered.

Dated this 29th day of August, 1960.

By the Court

John C. Pickett, United States Circuit Judge, Hatfield Chilson, United States District Judge, A. Sherman Christenson, United States District Judge.

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[24] DeVries v. Alger, supra, 44 N.W.2d 872.

[25] Allied Stores of Ohio, Inc. v. Bowers, 79 S.Ct. 437, 358 U.S. 522, 3 L.Ed.2d 480.

[26] Cf. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S.Ct. 962, 3 L.Ed.2d 1003.

Clerk's Note: Notation of entry of Judgment made in Bankruptcy Docket on August 30, 1960.

[fol. 26] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed September 28, 1960

I. Notice is hereby given that Harold Beck Kesler, the bankrupt above named, hereby appeals to the Supreme Court of the United States from the final order of the District Court of three judges herein, denying the petition of the bankrupt for injunctive relief against certain state officials who seek to enforce an allegedly unconstitutional state statute; which said order was entered in this proceeding on August 29, 1960. This appeal is taken pursuant to 28 USC, Section 1253.

II. The clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

(a) Bankrupt's Petition for injunctive relief, filed June 16, 1960.

(b) Answer of officers of Department of Public Safety of the State of Utah, filed June 27, 1960.

(c) Stipulation of Facts, filed August 12, 1960.

(d) Decision and Judgment, dated August 29, 1960, filed August 30, 1960.

III. The following question is presented by this appeal:

Whether Sections 41-12-13, 41-12-14 and 41-12-15, Utah Code Annotated, 1953, conflict with Section 17 of

the Bankruptcy Act, 11 USCA 35 and are therefore unconstitutional.

E. J. Skeen, Attorney for Bankrupt, 522 Newhouse Building, Salt Lake City 11, Utah.

Clerk's Note: Copy of Notice of Appeal mailed by the Clerk of the United States District Court to Counsel for respondent.

[fol. 28] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 29]

SUPREME COURT OF THE UNITED STATES

No. 539, October Term, 1960

HAROLD BECK KESLER, Appellant,

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH.

ORDER NOTING PROBABLE JURISDICTION—January 16, 1961

Appeal from the United States District Court for the District of Utah.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

January 16, 1961

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In the Supreme Court of the United States

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1961

In the Matter of

HAROLD BECK KESLER,

Bankrupt

JURISDICTIONAL STATEMENT

E. J. SKEEN
Attorney for Appellant
522 Newhouse Building
Salt Lake City 11, Utah

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In the Supreme Court of the United States

In the Matter of

HAROLD BECK KESLER,

Bankrupt

JURISDICTIONAL STATEMENT

(a) The opinion delivered in the court below is not as yet reported. A copy of the opinion is appended.

(b) (i) This is an appeal from a three judge decision of the United States District Court for the District of Utah, Central Division, denying to the bankrupt injunctive relief against the enforcement of a state statute alleged to be unconstitutional.

The bankrupt filed a petition requiring the officers of the Department of Public Safety of the State of Utah to appear before a three judge court constituted in accordance with the provisions of 28 U.S.C.A., section 2284, and to show cause why sections 41-12-13, 41-12-14 and 41-12-15, Utah Code Annotated, 1953, should not be declared unconstitutional and void for the reason that they conflict with Section 17 of the Bankruptcy Act, 11 U.S.C.A., section 35.

The state statutes referred to provide for the permanent suspension of a driver's license upon failure to satisfy within a certain time a judgment for damages resulting from the

negligent operation of a motor vehicle. Injunctive relief against the enforcement of the state statute was denied by the three judge court and this appeal is taken pursuant to 28 U.S.C.A., section 1253.

(ii) The judgment sought to be reviewed was dated August 29, 1960 and was filed on August 30, 1960. The notice of appeal was filed on September 28, 1960 in the United States District Court for the District of Utah, Central Division.

(iii) The statutory provision believed to confer on this court jurisdiction of the appeal is 28 U.S.C.A., section 1253, which provides as follows:

> "1253. Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges. June 25, 1948, c. 646, 62 Stat. 926."

(iv) Cases believed to sustain the jurisdiction are:

St. John v. Wisconsin Employment Relations Board, 340 U.S. 411, 71 S. Ct. 375, 95 L. Ed. 386; *Interstate Busses Corporation v. Blodgett*, 276 U.S. 245, 48 S. Ct. 230, 72 L. Ed. 551; *Radio Corporation of America v. United States*, 95 F. Supp. 660, affirmed, 341 U.S. 412, 71 S. Ct. 806, 95 L. Ed. 1062; *Rorick v. Board of Commissioners of Everglades Drainage Dist.*, 307 U.S. 208, 59 S. Ct. 808, 83 L. Ed. 1242.

(v) This appeal involves the constitutionality of a state statute, sections 41-12-13, 41-12-14 and 41-12-15, Utah Code Annotated, 1953. These sections are found in volume 5 of Utah Code Annotated, 1953, pages 327, 328. The text is set forth in the appendix. Sections 41-12-1 and 41-12-17, which contain definitions of terms and other pertinent information, are also appended.

(c) The question presented by this appeal is whether the Utah Safety Responsibility Act, which provides (1) for the permanent suspension of a judgment debtor's driver's license only upon the written request of the judgment creditor or his attorney, (2) for judgment creditor control of the restoration of such license and (3) that a discharge in bankruptcy shall not relieve the judgment debtor from any of the requirements of the Act, which conflicts with Section 17 of the Bankrupcty Act, 11 U.S.C.A. section 35 and is therefore unconstitutional. This question is presented by the following facts.

The bankrupt above named, duly scheduled in bankrupcty certain judgments arising out of his alleged negligent operation of an automobile. The claims evidenced by the judgments were provable in bankrupcty and were discharged. The judgment creditor acting pursuant to Section 41-12-13, Utah Code Annotated, 1953, requested the clerk of the District Court of Salt Lake County to forward to the Department of Public Safety of the State of Utah certified copies of the judgments against the bankrupt. Thereupon, in accordance with Section 41-12-14, Utah Code Annotated, 1953, the said Department of Public Safety permanently suspended the bankrupt's license to operate motor vehicles in the State of Utah and suspended the registration of his motor vehicle.

The bankrupt was engaged in operating a one-man automobile repair business at the time of filing his petition in bankruptcy and for several years prior thereto and in his business it frequently becomes necessary to road-test vehicles left for repair. The permanent suspension of his driver's license seriously impairs his ability to make a living.

After discharge in bankruptcy, th bankrupt made a written demand upon the Department of Public Safety for restoration of his driver's license and registration, basing such demand

upon his discharge in bankruptcy. J. C. Newman and Ralph W. Westwood, officers of the Department of Public Safety declined to restore the driver's license in reliance upon Section 41-12-15, Utah Code Annotated, 1953, which provides, "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this Act."

The bankrupt's petition for injunctive relief, the answer of the state officials and a stipulated statement of facts presents the constitutional question stated above.

(d) The question presented by this appeal is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution, for the reason that unless an injunction is ordered the bankrupt will be denied an important benefit of his discharge, in contravention of Section 17 of the Bankrupcty Act. The effect of the denial of relief will be to permit a state, by the legislation here attacked, to interfere with and complement Section 17 of the Bankruptcy Act. The power to establish uniform laws on the subject of bankruptcies is granted by the Constitution to the Congress of the United States, and such power is exclusive, unrestricted and paramount.

(e) As hereinabove stated a copy of the opinion of the three judge court is appended to this jurisdictional statement. There were no earlier opinions in the same case or opinions in companion cases, to which reference should be made, nor were there findings of fact and conclusions of law separately made.

E. J. SKEEN
Attorney for Appellant
522 Newhouse Building
Salt Lake City 11, Utah

APPENDIX

No. B-143-59

DECISION AND JUDGMENT IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

In the Matter of
HAROLD BECK KESLER,
Bankrupt.

Before PICKETT, Circuit Judge, and CHRISTENSON and CHILSON. District Judges.

E. J. Skeen, Esq., of Skeen & Skeen, Salt Lake City, Utah, for Bankrupt.

Gordon A. Madsen, Esq., Assistant Attorney General of the State of Utah (Walter L. Budge, Esq., Attorney General of the State of Utah, with him on the brief) for respondent Department of Public Safety, Financial Responsibility Division, State of Utah. CHRISTENSON, District Judge.

The bankrupt was duly discharged from liability on a properly scheduled judgment for personal injuries sustained by the creditor as a result of the bankrupt's adjudicated negligence in the operation of an automobile. Notwithstanding such discharge, his motor vehicle registration and operator's license are under suspension pursuant to the terms of the Utah Motor Vehicle Safety Responsibilty Act[1] for nonpayment of the judgment. Contending that provisions of the State law[2] authorizing such suspension are unconstitutional[3]

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(1) Chapter 12, Title 41, Utah Code Annotated, 1953 (41-12-1 et seq., UCA 1953).

(2) The Utah Safety Responsibility Act contains inter alia, the following provisions:
§13 Whenever any person fails within 60 days to satisfy any

and void because they conflict with Section 17 of the Bankruptcy Act,[4] the bankrupt, as petitioner, has brought this three judge court proceeding[5] in an attempt to compel restoration by state authority of his driving privileges.

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judgment, upon the written request of the judgment creditor of his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment.

If the judgment debtor named in any certified copy of a judgment reported to the commission is a non-resident the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificaton of the state of which the judgment debtor is a resident.

§14 (a) The commission, upon the recript of the certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgmeent was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility.

§15 Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued in the name of such person, in cluding any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act.

On June 21, 1957, Judgments were entered in a State Court for a total of $6,523.04 against Kesler and in favor of the guardians ad litem of certain minors.[6] These constituted provable claims which were discharged in bankrupcty on December 31, 1959. In the meantime, the judgment creditors, acting pursuant to Section 41-12-13 (quoted in the margin) requested the Clerk of the State Court to forward to the Department of Public Safety of the State of Utah certified copies of the Judgment. Whereupon, in accordance with the State law, the Department of Public Safety suspended the petitioner's license to operate a motor vehicle in the State of Utah and suspended the registration of his motor vehicle. The operator of a one-man automobile repair business, he has been greatly handicapped in the making of a living by the action of the State.

He prays that the provisions of the law relied upon by the State be declared void, and that designated officers of the Department of Public Safety of the State of Utah be required

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(3) Under the due process clause of the Fourteenth Amendment to the Constitution of the United States, and in view of Section 8, Clause 4, Ibid., authorizing the Congress to establish uniform Rules on the subject of Bankruptcies throughout the United States. "The national purpose to establish uniformity necessarily excludes State regulation. States may not pass or enforce laws to interfere with or complement the bankruptcy act or to provide additional or auxiliary regulations." International Shoe Co. v. Pinkus, 49 S.Ct. 108, 278 U.S. 261, 73 L.E. 318.

(4) Section 17 of the Bankruptcy Act, 11 USCA 35, provides: "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except . . . " (exceptions not applicable).

(5) Invoking the provisions of 28 USCA § 2281.

(6) Max L. Morley, guardian ad litem for Patricia Jo Morley and Janice Lee Morley, minors, and Alfred Leon, guardian ad litem for Eliss Ruth Leon, minor, v. Harold Beck Kesler, in The District Court of the Third Judical District of the State of Utah in and for Salt Lake County.

to reinstate his suspended rights, or that he be granted other appropriate relief.

The respondent, Department of Public Safety (Finanical Responsibility Division) of the State of Utah, conceding that this court has jurisdiction over the matters in issues and is empowered to determine the validity of the act as against respondent's attack, contends that it constitutes a valid exercise of the police power not in conflict with Section 17 of the bankrupcty act.

It must be recognized that automobile financial responsibility acts, which by now are common in the majority of states of the United States, have been rather consistently upheld against constitutional and other objections[7]. This has been on the theory that the State, in the exercise of its police power, may reasonably regulate the use of its highways, with the objective, among others, of minimizing the hardship flowing from the financial irresponsibility of users involved in accidents. Berberian v. Lussier (RI 1958), 139 A.2d 869; DeVries v. Alger (Mich. 1950), 44 N.W. 2d 872.

In Reitz v. Mealey,[8] the United States Supreme Court declared that any appropriate means adopted by a State to insure competence and care on the part of its licensees and to protect others using its highways is consistent with due process of law. It determined that a New York statute providing for the suspension of an operator's license for three years if a judgment against him resulting from the negligent operation of a motor vehicle was not paid or discharged other

(7) Anno.: Validity of Motor Vehicle Financial Responsibility Act, 35 ALR 2d 1011.

(8) 314 US 33, 62 S.Ct. 24, 86 L.Ed. 21 (1941). See also the decision of the three judge court from which the appeal was taken, D.C.N.D., New York, 1940, 34 F.Supp. 532.

than through bankrupcty, was valid and enforceable. In 1936 and 1939 certain amendments to the act so sustained had been adopted, which gave the creditor control over the restoration of a debtor's license and its continued force during the three year suspension period and made it the duty of the county clerk to certify a judgment only on written demand of the judgment creditor of his attorney. The Supreme Court, however, declined to pass upon the validity of these amendments, holding that the district court had properly thus abstained on the ground that under New York law a statute in itself constitutional would not be affected by an unconstitutional amendment. Petitioner says that the question avoided in Reitz v. Mealey is squarely presented here.

Petitioner's reliance is almost wholly upon Reitz v. Mealey; indeed, that decision necessarily must constitute the base and meridian of our survey of the applicable law since it represents the latest, in fact the only, authoritative and pertinent case that has been called to our attention or that we have been able to find(9). Reitz in effect lays down these propositions which we need not redebate with reference to cases like this one before us: (1) Without creditor controls, automobile financial responsibility laws such as Utah's would be both a legitimate exercise of the police power and consistent with the bankrupcty act; (2) If provisions of the act under attack are severable from its clearly valid provisions so that the court reasonably can say that the legislature intended the latter to stand despite the possible invalidity of the challenged provisions, and if

(9) The State relies strongly upon DeVries v. Alger, supra, 44 N.W.2d 872. It must be observed, however, that the Michigan statute there involved (Act 203, 1933, Compiled Laws Michigan, 1948, Secs. 256.251 et seq.) does not contain creditor control provisions relating to the suspension of privileges (Sec. 256.253) although it does permit their restoration under specified conditions with the consent of the creditor (Sec. 256.254).

under the unchallenged provisions the petitioner would be entitled to no relief, the court should not declare the act unconstitutional or invalid; and (3) If the facts do not invoke the operation of a challenged provision of the act, it being severable, the court should not pass upon its validity.

Despite some variation in expressions, we perceive no significant difference between the creditor controls of the Utah statute and of the New York amendments. Without these creditor controls the Utah statute clearly would be valid. Are they severable from the other provisions of the statute under which the petitioner's driving rights were suspended, in view of the separability clause set out in the Utah act?[10] This problem too should be decided in view of state law, as the Supreme Court in Reitz and in Meyer v. Wells Fargo & Co.,[11] indicated.

In Utah it is recognized that severability or separability, where part of a statute is unconstitutional, is a matter primarily of legislative intent[12]. The test, fundamentally, is whether the legislature would have passed the statute without the objectionable part, or whether the parts are so dependent upon each other that the court should conclude that the intent was

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(10) Section 41-12-40 of the act reads:
"Separability clause—If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts hereof would be declared unconstitutional."

(11) 223 U.S. 298; 32 S.Ct. 218; 56 L.Ed. 445.

(12) *State v. Ledkins*, (1956) 5 Utah 2d 422, 303 P.2d 1099. *Union Trust Co. v. Simmons*, (1949) 116 Utah 422, 211 P.2d 190. *Smith v. Carbon County*, (1938) 95 Utah 340, 81 P.2d 370.

that the statute be effective only in is entirety[13]. The courts may be aided in the determination of legislative intent by the inclusion within a statute of a saving clause, which will create a presumption of separability.[14]. But this presumption is not controlling if it is recognizable that the legislature would not have enacted the remaining provisions alone, or that standing alone they would not provide for an operative whole[15]. In Reitz, supra, the Supreme Court was of the view on principles similar to those recognized in the Utah decisions[16] that the questioned provisions were separable from the original statute.

The prevailing opinion stated on this point:

> "There is no evidence of intent that if the amendments could not stand the legislation as a whole should fail. On the contrary, the legislative history discloses a persistent purpose that such a scheme for the control of motor drivers should remain. Successive and frequent amendments have dealt with details but have left intact the major features of the legislation. In any case, we should accord great weight to the District Court's view of New York law. But an examination of the authorities convinces that in this case any contrary view is untenable."

With respect to the amendment giving the creditor control over the restoration of the operator's privilege prior to satis-

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(13) *State v. Ledkins, supra,* (1956) 5 Utah 2d 422, 303 P.2d 1099. *Union Trust Co. v. Simmons,* supra, (1949) 116 Utah 422, 211 P.2d 190. *Thomas v. Daughters of Utah Pioneers,* (1948) 114 Utah 108, 197 P.2d 477. *North Tintic Mining Co. v. Crockett,* (1929) 75 Utah 259, 284 P. 328. *State v. Barker,* (1917) 50 Utah 189, 167 P. 262.

(14) *Tygesen v. Magna Water Co.,* (1950) 119 Utah 274, 226 P. 2d 127. *Patterick v. Carbon Water Conservancy Dist.,* (1944) 106 Utah 55, 145 P.2d 503.

(15) *State v. Roberts,* (1937) 92 Utah 204, 66 P.2d 892. *State v. Barker,* supra, (1917) 50 Utah 189, 167 P. 262.

(16) See *State v. Barker,* supra, (1917) 50 Utah 189, 167 P. 262.

faction of the judgment in full, we believe that we are bound by the Supreme Court's view that a justiciable question would arise only if the creditor were shown to have invoked the provision by consenting to the renewal[17]. How this question ever would be raised, with the creditor not likely to do so if he has consented to the restoration and the debtor not willing to, is not clear to us as a practical matter, but we must follow the higher court in thus straining to avoid the constitutional issue. At least we have looked at these restoration provisions as background on legislative intent in connection with the other provisions of the law that are open to question before us. These other provisions relate to the control of the creditor in bringing about the suspension in the first instance. Unlike the situation in Reitz, we do not believe that we can or should avoid the testing of the latter problem here.

The New York statute, disregarding the amendments, made it the duty of the county clerk to certify to the Commissioner of Motor Vehicles any judgment of the kind involved here which had become final and remained unsatisfied for fifteen days. The Supreme Court said:

> "It is true that the bill alleges the Judgment in this case was certified at the request of the plaintiff's attorney, but if the amendment is void because it confers a power on the creditor inconsistent with the effect of the debtor's discharge, and is eliminated from the statute for that reason, it still remains that under

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(17) It is stated (p. 28 of 314 U.S.) on this point:
"Since the judgment in this case would or should have been certified prior to the amendment of 1939 and since the creditor has not sought to invoke the amendment of 1936 which gives him a control over the restoration of appellant's license and its continued force during the three year suspension period, we think the court was right in abstaining from deciding whether the amendments are annulled by §17 of the bankrupcty act."

the old law the county clerk's duty to certify was mandatory, and this judgment would have been certified if he had performed his official duty."

The Utah statute, sec. 41-12-13, provides in language similar to that of the 1939 amendment in New York that whenever any person fails within 60 days to satisfy any judgment, "upon the written request of the judgment creditor or his attorney, it shall be the duty of the clerk of the court . . . to forward to the commission immediately after the expiration of said 60 days a certified copy of such judgment." Section 41-12-41 says that, "The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registraton . . ." The real difference, if the challenged creditor control is to be disregarded, is that under the original New York Act there was provision for the mandatory forwarding of the judgment and there would be no such provision in the Utah law if the creditor controls in Section 41-12-13 were disregarded.

The Utah statute does provide that "the Commission, upon receipt of a certified copy of the judgment, shall forthwith suspend the license and registration . . ." It may be argued that this provision can stand alone to authorize the action of the Commission, notwithstanding how or upon whose action a certified copy may come into its possession. But this seems too haphazard a system upon which to justify the exercise of the police power, even in view of the separability clause. No provision is made in the Utah law for forwarding the judgment for action by the Commission except on motion of the creditor. The clerk has no duty to act in the absence of the creditor's request [18]. It seems inescapable under these circumstances

(18) Contrast the New York Statute, of which the Supreme Court observed (p. 38 of 314 U.S.): "But if the amendment is void because it confers a power on the creditor inconsistent with the

that we view the provision for the forwarding by the creditor of a certified copy of the judgment and the provision for the suspension of the operator's privileges upon the Commission's receipt of such judgment as essential parts and parcels of the same system. To judicially excise the one from the other would leave the surviving part a detached and meaningless member bearing no reasonable relationship to the exercise of the police power.

Regarding the provision under attack as inseparable from the provisions authorizing action by the Commission, we thus are confronted with the specific problem which the Supreme Court in Reitz found it unnecessary to decide: Does the fact that the judgment creditor must invoke the operation of the act by forwarding or causing to be forwarded a certified copy of the judgment, render the act unconstitutional or in contravention of Section 17 of the bankruptcy act? We have concluded that this question must be answered in the negative, with the result that the bankrupt's petition should be denied.

We are not unmindful that four of the Justices of the Supreme Court as then constituted held a contrary view,[19] and that comments in the prevailing opinion indicated that there might be some merit in the argument now made by the petitioner.[20]

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effect of the debtor's discharge, it still remains that under the old law the county clerk's duty to certify was mandatory, and this judgment would have been certified is he had performed his official duty."

(19) Summarized Mr. Justice Douglas in the dissenting opinion (p. 43 of 314 U.S.): "In short, this power which New York has given the creditor is a powerful collection device which should not be allowed to survive bankruptcy."

(20) P. 38 of 314 U.S.: "A more serious question arises in connection with § 17 of the bankruptcy act. The discharge of the debtor is a defense available against a suit on the judgment and against

But the very basis of the prevailing opinion — that of abstention from deciding the point—commends that we refrain from reading anything into the decision inconsistent with the proposition that the lower court and the Supreme Court did not decide the point directly or indirectly.

We must accept the proposition which was directly decided in Reitz, that a system involving the mandatory forwarding by the clerk of unsatisfied judgments for action by the Commission against the operating privileges of the judgment debtor is sustainable. On the latter point the Supreme Court said:

> "Second. Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also, the licensee furnished proof of his ability to respond in damages for any future accident.
>
> "If the statute went no further, we are clear that it would constitute a valid exercise of the state's police power not inconsistent with § 17 of the bankruptcy act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy

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execution process issued upon it. And there is force in the argument that § 94-b, as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the State or makes that public policy subservient to the private interest of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim."

Act. Rather it is an enforcement of permissible state policy touching highway safety."[21]

We do not regard as of critical significance the fact that the Utah statute provides for an indefinite suspension in the absence of settlement of the judgment, whereas the New York statute was limited in operation to three years.[22]

Hence, the Utah statute (insofar as we are required to pass upon it) would be valid, aside from its provision that copies of unexecuted judgments, necessary as foundations for action by the commission, must be forwarded at the request of the judgment creditor. Does this point render the act invalid? It seems a somewhat frail one upon which to rest a finding of unconstitutionality, although entirely sufficient if it be established that its basis and justification are the coercion of bankrupts into the payment of discharged debts.

Despite proper distrust of the police power as an instrument or occasion for private action, examples may be cited of the necessity and effectiveness of action by injured parties in setting in motion a system for the public's protection. Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make

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(21) P. 37 of 314 U.S.

(22) The New York statute directed the commission to suspend the license for three years unless, in the meantime, the judgment were satisfied or discharged, except by a discharge in bankruptcy. However, the suspension would continue after the expiration of the three years or satisfaction of the judgment, until the licensee gave proof of his ability to respond in damages by the procurement of insurance, the giving of a bond, or the posting of a deposit. The Utah statute provides that upon payment of the judgment to the amount of the required insurance ($5,000 bodily injury to or death of one person, $10,000 for more than one, and $1,000 property damage), the driving privileges may be restored upon the furnishing of proof of financial responsibility. Utah Code Annotated, 1953, 41-12-1; 41-12-16.

complaints before committing magistrates. Unless they do so, ordinary criminal prosecution, especially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirement in the act in question that the creditor initiate the process of suspension.

If the forwarding of judgments, remaining unsatisfied for some period were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. As a practical matter, the view reasonably could be entertained that the forwarding of copies of unsatisfied judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within legitimate objectives of the police power[23]. There might be differences of opinion as to the means best cauculated to carry out the legitimate purposes of the act with due regard to the rights and convenience of the parties involved. It is not the problem of the court to resolve these reasonable differences. Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do

(23) Another provision of the law not now under attack (41-12-15 Utah Code Annotated, 1953) provides that as to the more serious automobile accidents, prior to the entry of any judgment, but upon the basis of a statutory accident report, unless there is evidence that the operators involved have been released from liability, their operating privileges are to be suspended until they furnish specified security, but only if an injured party has submitted evidence of his damages to the commission. The incorporated creditor control also seems primarily for the benefit of the prospective debtor and points up the hardship that might unnecesserily result to him if the suspension were automatic.

so. The power to declare legislative enactments unconstitutional should be exercised with extreme caution[24]. The court cannot assume that state legislative enactments are adopted arbitrarily or without good reason to further some legitimate policy of the state[25]. Highway regulations enacted by a state carry a strong presumption of validity when challenged in court[26].

It is our judgment that the petition should be denied, and it is so ordered.

Dated this 29th day of August, 1960.

BY THE COURT

/s/ John C. Pickett
United States Circuit Judge

/s/ Hatfield Chilson
United States District Judge

/s/ A. Sherman Christenson
United States District Judge

Filed August 30, 1960.

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(24) DeVries v. Alger, supra, 44 N.W. 2d 872.

(25) Allied Stores of Ohio, Inc. v. Bowers, 79 S.Ct. 437, 358 U.S. 522, 3 L.Ed. 2d 480.

(26) Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 79 S.Ct. 962, 3 L.Ed.2d 1003.

PERTINENT SECTIONS OF UTAH SAFETY RESPONSIBILITY ACT

Title 41, Chapter 12
Utah Code Annotated, 1953

41-12-1

The following words and phrases, when used in this act, shall, for the purposes of this act, have the meaning respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(a) "Commission," the department of public safety.

(b) "Department," the division of safety and financial responsibility of the department of public safety.

(c) "Judgment." Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(d) "License." Any license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

(e) "Motor vehicle." Every self-propelled vehicle which is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles (except traction

engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails.

(f) "Nonresident." Every person who is not a resident of this state.

(g) "Nonresident's operating privilege." The privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him of a motor vehicle, or the use of a motor vehicle owned by him, in this state.

(h) "Owner." A person who holds a legal title of a motor vehicle, or in the event a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this act.

(i) "Operator." Every person who is in actual physical control of a motor vehicle.

(j) "Person." Every natural person, firm, copartnership, association or corporation.

(k) "Proof of financial responsibility." Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of $5,000 because of bodily injury to or death of one person, in any one accident, and, subject to said limit for one person, in the amount of $10,000 because of bodily

injury to or death of two or more persons in any one accident, and in the amount of $1,000 because of injury to or destruction of property of others in any one accident.

(l) "Registration." Registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles.

(m) "State." Any state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada.

41-12-13

Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the Commission immediately after the expiration of said 60 days, a certified copy of such judgment.

If the judgment debtor named in any certified copy of a judgment reported to the commission is a nonresident, the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the judgment debtor is a resident.

41-12-14

(a) The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration of any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privileges, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility.

41-12-15

Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act.

41-12-17

(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

(b) The commission shall not suspend a license, registration or nonresident's operating privilege, and shall restore any license, registration or nonresident's operating privilge suspended following nonpayment of a judgment, when the judgment gives proof of financial responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any such installment is not in default.

(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commission shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this act.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 21 1961
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. [redacted]14

HAROLD BECK KESLER, APPELLANT,

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

BRIEF OF APPELLANT

J. D. SKEEN
E. J. SKEEN
Attorneys for Appellant
522 Newhouse Bldg.
Salt Lake City, Utah

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 539

HAROLD BECK KESLER, APPELLANT

vs.

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

BRIEF OF APPELLANT

OPINION BELOW

(a) The citation of the official report of the opinion delivered in the court below is 187 Federal Supplement, 277.

JURISDICTIONAL STATEMENT

(b) This is an appeal from a three judge decision of the United States District Court for the District of Utah (R. 11) denying injunctive relief against the enforcement of the Utah Safety Responsibility Act alleged to be unconstitutional because

it conflicts with the Bankruptcy Act. The case was tried to a district court of three judges pursuant to 28 USCA, section 2281. The statute believed to confer jurisdiction of this appeal is 28 USCA, section 1253 (Act of June 25, 1948, C 646, 62 Stat. 926). The judgment sought to be reviewed was filed August 30, 1960. The notice of appeal was filed September 28, 1960. Probable jurisdiction was noted January 16, 1961 (R. 25).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

(c) The following Constitutional provision, federal statute and state statute are involved in this case:

Article I, section 8, clause 4, of the Constitution of the United States grants to Congress the power:

> To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.

Section 17 of the Bankrupcty Act, 11 USCA 35 provides:

> "(a) A discharge in bankrupcty shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) are due as a tax levied by the United States, or any State, county, district, or municipality; (2) are liabilities for obtaining money or property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bank-

rupt, unless such creditor had notice or actual knowledge of the proceedings in bankrupcty; or (4) were created by his fraud, embezzlement, misappropriation or defalcation while acting as an officer or in any fiduciary capacity; or (5) are for wages which have been earned within three months before the date of commencement of the proceedings in bankrupcty due to workmen, servants, clerks, or traveling or city salesmen, on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt; or (6) are due for moneys of an employee received or retained by his employer to secure the faithful performance by such employee of the terms of a contract of employment."

The state statute believed to be in conflict with the Bankruptcy Act is known as the Utah Safety Responsibility Act, Title 41, Chapter 12, Volume 5, Utah Code Annotated, 1953. The particular sections here involved are 41-12-13, 41-12-14, 41-12-15, and 41-12-17, which are quoted below:

41-12-13

"Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment

"If the judgment debtor named in any certified copy of a judgment reported to the commission is a nonresident, the commission shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the judgment debtor is a resident."

41-12-14

"(a) The commission, upon the receipt of a certified

copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except as hereinafter otherwise provided in this section and in section 41-12-17.

"(b) If the judgment creditor consents in writing, in such form as the commission may prescribe, that the judgment debtor be allowed license and registration or nonresident's operating privilege, the same may be allowed by the commission, in its discretion, for 6 months from the date of such consent and thereafter until such consent is revoked in writing notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 41-12-17, provided the judgment debtor furnishes proof of financial responsibility."

41-12-15

"Such license, registration and nonresident's operating privilege shall remain so suspended and shall not be removed, nor shall any such license or registration be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is stayed, satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 41-12-14 and 41-12-17.

"A discharge in bankrupcty following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act."

41-12-17

"(a) A judgment debtor upon due notice to the judgment creditor may apply to the court in which such judgment was rendered for the privilege of paying such judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payments of the installments.

"(b) The commission shall not suspend a license, registration or a nonresident's operating privilege, and shall restore any license registration or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of finanical responsibility and obtains such an order permitting the payment of such judgment in installments, and while the payment of any said installment is not in default.

"(c) In the event the judgment debtor fails to pay any installment as specified by such order, then upon notice of such default, the commission shall forthwith suspend the license, registration or nonresident's operating privilege of the judgment debtor until such judgment is satisfied, as provided in this act."

QUESTION FOR REVIEW

(d) The question presented for review is whether the Utah Safety Responsibility Act which provides (1) for the permanent suspension of a judgment debtor's driver's license only upon the written request of the judgment creditor and his attorney, (2) for judgment creditor control of the restoration of such license, and (3) that a discharge in bankrupcty shall not relieve the judgment debtor from any of the requirements of the act, conflicts with section 17 of the Bankrupcty Act. (11 USCA 35) and is therefore unconstitutional.

STATEMENT OF THE CASE

(e) The facts in this case are stipulated (R. 9-11).

Judgments against the appellant were entered in a state district court for injuries sustained as a result of the appellant's negligence in the operation of an automobile. In accord-

ance with the Utah Safety Responsibility Act, hereinafter referred to as the "Utah statute," section 41-12-13, Utah Code Annotated, 1953, (quoted above Pages 3-5) the judgment creditors requested the Clerk of the Court to forward to the Utah Department of Public Safety certified copies of such judgment. Thereupon the department acting in accordance with the provisions of the statute suspended the appellant's license to operate a motor vehicle in Utah and suspended the registration of his automobile (R. 9).

At the time of the suspension of his driver's license, the appellant was engaged in operating a one-man automobile repair business and had been so engaged for several years. His work frequently requires the road-testing of vehicles which are left for repair and the suspension of his driver's license seriously impairs his ability to make a living (R. 10).

The appellant filed a petition in bankrupcty scheduling the judgments mentioned above. The claims so scheduled were provable claims and were discharged in bankrupcty (R. 9).

Shortly after the discharge, the appellant made a written demand upon the Department of Public Safety for revocation of the suspension upon the ground that the judgment upon which the suspension was based had been discharged under the Bankruptcy Act. The department declined to revoke the suspension, pointing out that section 41-12-15 of the Utah statute specifically provides that a discharge in bankrupcty shall not relieve the judgment debtor from any of the requirements of the Act (R. 10).

The appellant filed a petition in the United States District Court attacking the validity of the Utah statute upon the ground that it conflicts with section 17 of the Bankrupcty Act, and

violates Article I, Section 8 of the Constitution of the United States which grants to the Congress the power to establish laws on the subject of bankruptcies. The prayer was for the restoration of the driver's license and the vehicle registration certificate (R. 3). The petition was denied by a three judge court (R. 23).

ARGUMENT

(f) The appellant contends:

1. The bankrupcty court has jurisdiction to enforce its judgment.

2. The Utah statute conflicts with section 17 of the Bankrupcty Act.

3. The bankrupcty power is "unrestricted and paramount" and state statutes in derogation thereof are void.

THE BANKRUPTCY COURT HAS JURISDICTION TO ENFORCE ITS JUDGMENT.

This is a proceeding in the bankrupcty court to enforce by injunction its judgment of discharge in bankruptcy. It is clear that a federal court of equity has such jurisdiction.

Local Loan Co. v. Hunt, 292 U.S. 234, 54 S. Ct. 695, 78 L. ed. 1230 (1934)

U. S. Migshell, 273 F 2d 682 (10th Cir.) (1959)

Reitz v. Mealey, 34 F. Supp. 532 (D.C.N.D. New York) (1940).

In Local Loan Co. v. Hunt, this Court held:

> "That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled . . . (292 U.S. 239). These principles apply to proceedings in bankruptcy." (292 U.S. 240).
>
> * * * *
>
> "What has now been said establishes the authority of the bankruptcy court to entertain the present proceeding, determine the effect of the adjudication and order, and enjoin petitioner from its threatened interference therewith." (292 U.S. 241). (Page references added).

In the case of U. S. v. Migshell, supra, the United States Court of Appeals, Tenth Circuit, affirmed the issuance of an injunctive order restraining the Director of Internal Revenue from asserting against the bankrupts certain claims for penalties and interest.

In the case of Reitz v. Mealey, supra, a three judge court considered a motion to enjoin the Commissioner of Public Vehicles of New York from suspending a bankrupt's driver's license. In commenting upon the pleadings the court said:

> "It would have been more regular to proceed by petition in the bankruptcy proceeding as this 'action' is strictly a 'controversy' in bankruptcy, ancillary to the main proceeding; but since the difference is only one of form we will disregard it." (34 F. Supp. at p. 533).

In the present case the petition was filed in the bankrupcty proceeding to preserve and protect the fruits of the bankruptcy.

It is clear that under the principles stated in the cases cited

above this Court has jurisdiction of the controversy and authorty to grant the injunctive relief prayed.

THE UTAH STATUTE CONFLICTS WITH SECTION 17 OF THE BANKRUPTCY ACT.

Section 17 of the Bankrupcty Act, 11 USCA 35, provides:

> "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except . . . (exceptions not applicable).

The Utah statute attempts to deny to the bankrupt protection of the discharge with respect to judgments resulting from the negligent operation of a motor vehicle, by granting to the judgment creditor in such cases the right to control the suspension of a driver's license and certificate of registration of his vehicle. The effect of the statute is to make the Department of Public Safety a collection agent for the judgment creditor.

The following specific provisions of the statute make this abundantly clear.

1. The license and registration are not suspended until upon the written request of the judgment creditor or his attorney the clerk of the court sends to the commission a certified copy of the judgment (41-12-13).

2. The commission "shall forthwith suspend" the license and registration. (41-12-14).

3. If the "judgment creditor consents in writing" the suspension may be lifted for 6 months or until the consent is revoked. (41-12-14).

4. The suspension is permanent unless the judgment is satisfied or is paid to the amount of required insurance

($5,000 bodily injury to or death of one person, $10,000 for more than one, and $1,000 property damage). Bankrupcty does not relieve the judgment debtor. (41-12-15).

5. A judgment debtor may apply to a court for the privilege of paying in installments and thus get his license and registration restored. (41-12-17).

6. If the judgment debtor defaults on an installment payment the license and registration is again suspended. (41-12-17).

This Court considered a New York statute, in the case of Reitz v. Mealey, 314 U.S. 33, 62 S. Ct. 24, 86 L. ed. 21, (1941), which as amended, contained provisions almost identical to those set out above. The Reitz case involved a factual situation similar to the present case except that the New York statute, before amendment, required the Clerk to send a certified copy of the judgment to the commission, and the commission was required to suspend the driver's license. The judgment creditor had nothing to do with the matter.

The amendments of the New York statute in 1936 and 1939 brought the judgment creditor into the picture and provided for suspension only upon the filing of a certified copy of the judgment at the request of the judgment creditor, and for the restoration of the license, upon consent in writing of the creditor or six months or as long thereafter as the consent remained outstanding. The amendments and the Utah statute are practically identical. The three judge court declined to grant injunctive relief upon the following reasoning:

> "However, we need not pass on the constitutionality of either of the amendments, for it is well settled in New York, as elsewhere, that a statute itself consti-

> tutional, is not affected by an unconstitutional amendment; the amendment is brutum fulmen and drops out as though never passed . . . " (34 F. Supp. 532 at p. 535).

The case was appealed to this Court and was affirmed by a 5 to 4 decision. The Court reached its conclusion by eliminating from consideration the amendments of doubtful validity. However, the Court said: (314 U.S. at p. 38)

> "A more serious question arises in connection with section 17 of the Bankruptcy Act. The discharge of the debtor is a defense available against a suit on the judgment and against execution process issued upon it. And there is force in the argument that 94-b, as amended, in truth deprives the debtor of the immunity afforded by his discharge, leaves out of view the public policy of the State or makes that public policy subservient to the private interest of the creditor by affording him the opportunity to initiate, remove and revive the suspension of the license upon terms as to payments on account of his claim."

It will be noted that the majority opinion admits "there is force in the argument that section 94-b, *as amended,* in truth deprives the debtor of the immunity afforded by his discharge." As indicated above the Utah statute under attack is substantially the same as the New York amendments.

In a dissenting opinion by Mr. Justice Douglas, concurred in by Mr. Justice Black, Mr. Justice Byrnes and Mr. Justice Jackson, it is said:

> "Under the New York scheme a creditor whose claim has been discharged still holds a club over his debtor's head. The state has given him a remedy which survives bankruptcy. If the bankrupt refuses to pay his discharged debt, the creditor will see to it that his driver's

license is suspended. If, however, the bankrupt will pay up, the creditor will refrain.

"The practical pressures of this collection device are apparent. Where retention of the operator's license is essential to livelihood, as here alleged, the bankrupt is at the creditor's mercy. Bankruptcy is not then the sanctuary for hapless debtors which Congress intended. The bankrupt instead of receiving by virtue of his discharge 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt' (Local Loan Co. v. Hunt, 292 US 234, 244, 78 L. ed. 1230, 1235, 54 S Ct 695, 93 ALR 195, 24 Am Bankr. Rep (NS) 668) finds himself still entangled with a former creditor.

"In practical effect the bankrupt may be in as bad, or even worse, a position than if the state had made it possible for a creditor to attach his future wages. Such a device would clearly contravene the Bankruptcy Act. Local Loan Co. v. Hunt, supra. The present one likewise runs afoul of the Act."

It is interesting to note that the New York statute was repealed in 1941 and was reenacted with the creditor control features eliminated. Laws of New York, 1941, ch. 872.

The New York statute provided for suspension for 3 years. The Utah statute provides for *permanent suspension*, unless the judgment is paid to a certain amount, and makes the collection pressure many more times effective. As the obvious collection features are increased, the legitimate police power feature is minimized. We quote from the opinion of Judge Cooper in his dissenting opinion in the lower court in the case of Reitz v. Mealey, 34 F. Supp. 532 at p. 538:

"It is a transparent attempt by the State to provide a means by which the private citizen may, in violation of the bankruptcy laws of the United States, collect

his judgment in whole or in part from one and an unknown class of persons, viz., those licensed to operate a motor vehicle on those highways against whom a negligence judgment arising from the operation of such motor vehicle has been recovered and remains unpaid, which judgment is discharged under the bankruptcy laws or will be discharged.

"The statute expressly says that the license when suspended at the judgment creditor's discretion "shall remain so suspended * * * while any such judgment or judgments remain unstayed, unsatisfied and subsisting, either until said judgment or judgments are satisfied or discharged, *except by a discharge in bankruptcy*, to the extent * * * ."

"In other words it is an attempt on the part of the one state to withdraw from the Federal Government, for the benefit of a limited class of persons, a portion of the bankruptcy power delegated by the States to the Federal Government in the Constitution and thereby destroy the uniformity of the bankruptcy laws, so far as the State of New York is concerned. One of the functions of that Federal Power under the Constitution is to declare what judgments are dischargeable and to provide for their discharge.

"When the bankrupt is discharged from his debts under the Federal Bankrupcty Law, no state has power to make any sanctions or procedure by which a discharged judgment may nevertheless be collected under whatever guise that sanction or procedure may be dressed."

The Utah statute in its present form was enacted in 1951 (Laws of Utah, 1951, chapter 71). It is clear that the reasoning of the three judge court and this Court in the Reitz case cannot be followed here. The Utah statute must stand or fall, as written, because there are no amendments which can be eliminated in the consideration of the case to avoid the constitutional

question, nor are the parts of the Utah statute relating to suspension of the driver's license separable from the remainder.

Although the Utah statute contains a provision (section 41-12-40) to the effect that if any part or parts of the statute "shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts . . . ", the Supreme Court of Utah has held that such provision merely creates a presumption of separability. State v. Roberts, 92 Utah 204, 66 P. 2d 892 (1937). Patterick v. Carbon Water Conservancy District, 106 Utah 55, 145 P. 2d 503 (1944). But the presumption is not controlling if it appears that the legislature would not have enacted the statute without including the objectionable provisions. State v. Roberts, supra. Without the provisions under attack in this case the general intent of the Utah statute would be defeated because there would be no "teeth" provided for enforcement.

The conflict between section 17 and the Utah statute is evident. An injunction must issue to protect and preserve the rights granted to the petitioner by the Bankruptcy Act.

THE BANKRUPTCY POWER IS UNRESTRICTED AND PARAMOUNT AND STATE STATUTES IN DEROGATION THEREOF ARE VOID.

Article I, section 8, of the Constitution of the United States grants to the Congress the power:

> "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

The Supreme Court of the United States held in the case of International Shoe Co. v. Pinkus, 278 U.S. 261, 73 L. ed. 318 (1929):

"The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount. Const. Art. I, Sec. 8, Cl. 4.

" . . . The national purpose to establish uniformity necessarily excludes state regulation. * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act, or to provide additional or auxiliary regulations." (278 US at p. 265).

CONCLUSION

The Utah statute was obviously intended to and does keep a discharged judgment alive and enforceable at the election and discretion of the judgment creditor for the purpose of supporting the suspension of the driver's license and registration. The state has attempted by this legislaiton to enable creditors to apply pressure for the collection of judgments even though such judgments are discharged in bankrupcty. In substance and effect the state seeks to write an additional exception into section 17 of the Bankrupcty Act. That power rests exclusively with the Congress. The State statute in contravention of the Bankrupety act is therefore void and an injunction should be ordered.

Respectfully submitted,

J. D. SKEEN
E. J. SKEEN
Attorneys for Appellant
522 Newhouse Bldg.
Salt Lake City, Utah

SUPREME COURT, U. S.

FILED
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JAMES R. BROWNING, CLERK

No. [redacted]

In the Supreme Court of the United States

OCTOBER TERM, [redacted] 1961

HAROLD BECK KESLER,

Appellant

—vs.—

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

AN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BRIEF OF APPELLEE

WALTER L. BUDGE
Attorney General
GORDON A. MADSEN
Assistant Attorney General
Attorneys for Appellee
State Capitol
Salt Lake City, Utah

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 539

HAROLD BECK KESLER,

Appellant

—vs.—

DEPARTMENT OF PUBLIC SAFETY, FINANCIAL RESPONSIBILITY DIVISION, STATE OF UTAH

AN APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BRIEF OF APPELLEE

OPINION BELOW

The opinion of the three-judge United States District Court for the District of Utah (R. 11 through 23) is reported at 187 Federal Supplement 277.

JURISDICTION

The judgment of the three-judge United States District Court for the District of Utah was entered on August 30, 1960, denying relief to a bankrupt petitioner seeking an injunction against the enforcement of the Utah Safety

Responsibility Act, alleged to be unconstitutional on the ground that it conflicts with the Bankruptcy Act (R. 23). The petitioner filed a Notice of Appeal on September 28, 1960 (R. 24). Probable Jurisdiction was noted January 16, 1961 (R. 25).

QUESTION PRESENTED

1. Whether Sections 41-12-13, 41-12-14, 41-12-15 and 41-12-17, Utah Code Annotated, 1953, Volume 5, are unconstitutional because they conflict with Section 17 of the Bankruptcy Act, 11 U.S.C.A. 35 and its constitutional implementation, Article I, Section 8, Clause 4, of the United States Constitution.

STATEMENT

The facts giving rise to this case are stipulated (R. 9-11). Following judgments rendered June 21, 1957, against appellant for negligent operation of a motor vehicle, resulting in an accident causing personal injuries (R. 9), appellee, pursuant to Section 41-12-13, U.C.A. 1953 (R. 6), upon motion of counsel for the judgment creditors, revoked the driver's license of appellant (R. 9). Subsequent to the suspension of the driver's license, appellant filed a petition in bankruptcy in which he scheduled the above mentioned judgments (R. 9). Also, two additional items were scheduled. One was the claim of appellant's attorney for fees arising out of the negligence action, and the other, a claim of a finance company for $502.25 (R. 10). Appellant received a discharge December 31, 1959 (R. 9).

Following his discharge, appellant made written demand upon appellee for reinstatement of his driver's license on the ground that the judgment upon which the suspension was based had been discharged in bankruptcy (R. 10). The request was refused by appellee. In its refusal,

appellee cited Section 41-12-15, U.C.A. 1953, which provides in part:

> "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this act." (R. 10)

On March 17, 1960, appellant initiated the action below by petition under the provisions of Title 28, U.S.C.A., Sections 2281 and 2284 (R. 1-3). At the hearing of the matter, appellee conceded that the specially-convened court had jurisdiction over the matter in issue and was empowered to determine the constitutionality of the state act (R. 14). Appellant's petition was denied unanimously by the three-judge court (R. 23).

ARGUMENT

While appellant below and herein attacks the constitutionality of several sections of the Utah Financial Responsibility Act, the court below ruled that only the provisions of Sections 41-12-13, 41-12-14(a) and 41-12-15 are properly before the court, since the other provisions were not invoked and a "justiciable controversy" had not arisen therefrom. The lower court said in part:

> "With respect to the amendment [41-12-17] giving the creditor control over the restoration of the operator's privileges prior to satisfaction of the judgment in full, we believe that we are bound by the Supreme Court's view that a justiciable question would arise only if the creditor were shown to have invoked the provision by consenting to the renewal. How this question ever would be raised, with the creditor not likely to do so if he has consented to the restoration and the debtor not willing to, is not clear to us as a practical matter, but we

must follow the higher court in thus straining to avoid the constitutional issue." (R. 17-18)

Since the bulk of appellant's brief before this court concerns itself with the provisions of Sections 41-12-13, 41-12-14(a) and 41-12-15, appellee concludes that he has abandoned any attack on the constitutionality of the remaining provisions of the Utah act cited.

The pertinent portion of the Bankruptcy Act is as follows:

> "(a) A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except * * *." (Exceptions not applicable.)

The contested language of the Utah act is as follows:

41-12-13.

> "Whenever any person fails within 60 days to satisfy any judgment, upon the written request of the judgment creditor or his attorney it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which any such judgment is rendered within this state, to forward to the commission immediately after the expiration of said 60 days, a certified copy of such judgment. . . ."

41-12-14.

> "(a) The commission, upon the receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and any nonresident's operating privilege of any person against whom such judgment was rendered, except . . . ." (Exceptions not in issue.)

41-12-15.

> * * *
>
> "A discharge in bankruptcy following the rendering of any such judgment shall not relieve the

judgment debtor from any of the requirements of this act."

Appellee contends that the Utah statute is constitutional for the reasons that (a) it is a constitutional and proper exercise of the state's police power; (b) it is entitled to a presumption of constitutionality and meets the standards of constitutionality imposed by this court upon such statutes; appellee further contends (c) that the "creditor control" provisions of the Utah act are incidental rather than primary, and have the effect of softening the otherwise harsh effects of the act if revocation were automatic; and finally (d) that to permit appellant the relief sought would nullify the effects and purposes of the state statute through the simple expediency of a voluntary bankruptcy.

(a) Proper exercise of state police power.

Every state of the union has some form of a Financial Responsibility Act. Many of such statutes have been modeled after the "Uniform Vehicle Code," published by the National Committee on Uniform Traffic Laws and Ordinances. With the exceptions of Tennessee and Vermont, all of the states require revocation of a driver's license upon failure to satisfy a judgment arising from personal injuries received from a negligence accident. Twenty-one states[1] and the District of Columbia have a provision similar to Section 41-12-13, Utah Code Annotated 1953, in issue here. The model provision is found at Section 7-306 of the Uniform Vehicle Code. The section in

[1]Alabama, Arkansas, Florida, Georgia, Hawaii, Kansas, Louisiana, Maryland, Mississippi, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Texas and Utah.

question provides that the judgment giving rise to revocation of the license shall be forwarded to the state licensing agency upon the judgment creditor's, or his attorney's, request. The remaining jurisdictions, with varying modifications, require that the judgments be certified from the court to the state agency automatically.

It is interesting to note, incidentally, that contrary to the assertion of appellant, at page 12 of his brief, the creditor request provision remains a part of the New York Financial Responsibility Act. While appellant is correct in asserting that the original provision was repealed in 1941, the repeal was a process of reenacting and recataloguing the state's Financial Responsibility Act. It now appears as § 336, 62A, McKinney's Consolidated Laws of New York, Annotated, at page 136.

Financial Responsibility Acts similar to the Utah statute now before the court have been repeatedly assailed as unconstitutional in a number of jurisdictions[1] on three major grounds—(1) violation of the due process clause, (2) in conflict with equal protection clause, (3) in derogation of the Bankruptcy Act. The cases from these jurisdictions are collected in an annotation at 35 A.L.R. 2d 1015 through 1020. See also 115 A.L.R. 1376.

As noted by appellant, this court, in *Reitz v. Mealey*, 314 U.S. 33, (1941), upheld the former New York act. References to this case will be made later in this brief. In each state where the constitutionality of its Financial Responsibility Act has been questioned, the act has universally been upheld as a valid and constitutional exercise of the state's police power. The majority of the holdings adopt the view

[1]Arizona, California, New York, Ohio, Tennessee, West Virginia, Michigan, New Jersey and Pennsylvania.

that a driver's license is a privilege bestowed by the state and subject, therefore, to whatever reasonable regulations the state chooses to impose thereon. In *Moorehead v. Mississippi Safety-Responsibility Bureau*, 232 Miss. 422, 99 So. 450 (1958), there is a collection of the cases so holding. The opinion cites first the case of *Texas Department of Public Safety v. Jackson*, 272 S. W. 2d 577, 579, which says:

> " 'The grant of a driver's license to operate a motor vehicle has been held in this State, as in others, to be a privilege, and not a right. Department of Public Safety v. Gillespie, supra [Tex. Civ. App., 254 S.W. 2d 177]. As a privilege, it may be conditioned in such manner as the Legislature sees fit.' "

Following this citation are quotes from a number of other cases from neighboring state jurisdictions with the final reference benig to the New York case of *Ohlson v. Mealey*, 179 Misc. 13, 37 N.Y.S. 2d 123, 126. The language cited reads:

> " 'It must be borne in mind that licensees of motor vehicles take their licenses and accept the privileges thereof subject to such conditions as the Legislature sees fit to impose. [Cases cited.] The reasonableness and necessity of regulation of the character provided for in the statute under consideration has long been recognized.' "

Following the Ohlson case, in which the privilege theory was adopted, New York has since ruled that a license to drive is a property right. However, the New York courts continue to maintain that the state retains control and regulation powers over this right, as is demonstrated in the case of *Grosso v. Hults*, 193 N.Y.S. 2d 544, 546 (1959), as follows:

> "Although the possession of a license to drive is a vested property right (Moore v. Macduff, 309

N.Y. 35, 127 N.E. 2d 741) and may not be taken away except by due process (Wignall v. Fletcher, 303 N.Y. 435, 103 N.E. 2d 728), the Legislature in exercising its power reasonably to regulate the use of highways may impose reasonable conditions before a licensee is issued and for continued possession of the same. In *Reits v. Mealey*, 314 U.S. 33, at page 36, 62 S. Ct. 24, at page 26, 86 L. Ed. 21, the Supreme Court said:

" 'The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers. *Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highways is consonant with due process.*' " (Emphasis added.)

Thus, it appears that whether a driver's license is thought of as a property right or a privilege, the state's inherent right reasonably to regulate the issuance and suspension of the same has been universally upheld.

In the case of *DeVries v. Alger, Secretary of State*, 329 Mich. 68, 44 N.W. 2d 872 (1950), a provision similar to Section 41-12-15, Utah Code Annotated 1953, cited above, was contested. This is the provision which provides that a discharge in bankruptcy shall not affect the operation of the act. In *DeVries*, the bankrupt claimed the Michigan and the United States Constitutions had been violated because of the inconsistency of that provision with Section 17 of the Bankruptcy Act. The bankrupt insisted further that the judgment on which the license had been revoked was barred by the statute of limitations. The court cited the *Reits* opinion noted above and continued at 876 of 44 N.W. 2d:

"Reasonable minds agree that the legislature has the right under its police powers to control auto-

mobile traffic. One of the purposes of the act in question is the regulation of such traffic by the control of those who may be licensed to drive a motor vehicle. In our opinion the act in question is not unconstitutional.

"It is also urged that the defendant in his construction of the statute attempts to make the office of the Secretary of State an agency to enforce payment of a debt. The running of the statute of limitations does not cancel the debt, it merely prevents a creditor from enforcing his claim.

* * *

"It clearly appears to have been the policy of the legislature that a discharge of a debt by bankruptcy does not relieve the debtor from the requirements of the act. Likewise, in our opinion, the statute of limitations should not relieve a debtor from the requirements of the act. In each case the moral obligation to pay a just debt remains, but the power to enforce payment is stayed by operation of law."

The Michigan statute construed in the *DeVries* case was as follows:

"A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this chapter."

This statute is identical to Section 41-12-15, Utah Code Annotated 1953, with the exception that the word "chapter" at the end of the sentence appears as "act" in the Utah statute. This case clearly upholds that provision of the statute as constitutional.

With regard to Section 41-12-13, since the comparable section of the New York Act reviewed in the *Reitz* case, supra, was an amendment which the majority opinion refused to construe, appellant has urged in his brief that this court should therefore adopt the view of the dissenting opin-

ion in that case because it concerns itself primarily with the amendment. This same argument was pressed below by appellant and the court ruled:

> "We are not unmindful that four of the Justices of the Supreme Court as then constituted held a contrary view, and that comments in the prevailing opinion indicated that there might be some merit in the argument now made by the petitioner.
>
> "But the very basis of the prevailing opinion—that of abstention from deciding the point—commends that we refrain from reading anything into the decision inconsistent with the proposition that the lower court and the Supreme Court did not decide the point directly or indirectly.
>
> "We must accept the proposition which was directly decided in Reitz, that a system involving the mandatory forwarding by the clerk of unsatisfied judgments for action by the commission against the operating privileges of the judgment debtor is sustainable. On the latter point the Supreme Court said:
>
> " 'Second. Prior to the amendment of 1936, the license could not be restored until three years had expired from its suspension unless the judgment were paid or discharged, except by a discharge in bankruptcy, and unless, also, the licensee furnished proof of his ability to respond in damages for any future accident.
>
> " 'If the statute went no further, we are clear that it would constitute a valid exercise of the state's police power not inconsistent with § 17 of the bankruptcy act. The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary

bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety.' [P. 37 of 314 U.S.]

"Hence, the Utah statute (insofar as we are required to pass upon it) would be valid, aside from its provision that copies of unexecuted judgments, necessary as foundations for action by the commission, must be forwarded at the request of the judgment creditor. Does this point render the act invalid? It seems a somewhat frail one upon which to rest a finding of unconstitutionality, although entirely sufficient if it be established that its basis and justification are the coercion of bankrupts into the payment of discharged debts.

"Despite proper distrust of the police power as an instrument or occasion for private action, examples may be cited of the necessity and effectiveness of action by injured parties in setting in motion a system for the public's protection. Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make complaints before committing magistrates. Unless they do so, ordinarily criminal prosecution, expecially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirement in the act in question that the creditor initiate the process of suspension.

"If the forwarding of judgments, remaining unsatisfied for some period, were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. As a practical matter, the view reasonably could be entertained that the forwarding of copies of unsatisfied

> judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within the legitimate objectives of the police power. There might be differences of opinion as to the means best calculated to carry out the legitimate purposes of the act with due regard to the rights and convenience of the parties involved. It is not the problem of the court to resolve these reasonable differences. Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do so. . .'' (R. 20-23)

The reasoning of the court below commends itself to this tribunal, and the appellee urges that this court adopt the same.

(b) Presumption and standards of constitutionality.

In the case of *Bibb v. Navajo Freight Lines,* 359 U.S. 520, a portion of the Illinois Motor Vehicle Code, requiring certain safety devices to be attached to truck wheels, was claimed unconstitutional on the ground that it conflicted with the commerce clause. This court therein said, at page 524:

> "These safety measures carry a strong presumption of validity when challenged in court. If there are alternative ways of solving a problem, we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it' South-

ern P. Co. v Arizona, supra [325 U.S. 775, 776], we must uphold the statute."

Appellee maintains that the act in question is in fact a "safety measure" within the meaning of the language of that case. That is, the statute concerns itself primarily with highway safety and the preventing of financially irresponsible people from using the state's roads. The statute is, therefore, entitled to the same presumption of validity and is subject to the same standards. As noted above, Financial Responsibility Acts have been repeatedly upheld as accomplishing a legitimate, legislative purpose and objective properly within the respective states' police power. Appellee respectfully submits that this court should find that the state policy of preventing financially irresponsible drivers from using its highways outweighs whatever intrusion the act may incidentally make into the field of bankruptcy.

(c) Creditor benefits are incidental.

The Utah act, by its own terms, read as a whole, is predominantly a police statute and is not preoccupied with the collection of otherwise discharged debts. Specifically, the provisions of Section 41-12-14(b) (R. 6) (which section, as noted above, is not attacked as unconstitutional because it was not invoked below) provide that a revoked license may be returned to the judgment debtor with the consent of the judgment creditor. This section, however, adds the additional qualification that the judgment debtor also furnish "proof of financial responsibility" and, incidentally, provides that the creditor's written consent must be in "such form as the commission may prescribe." These provisions indicate that the creditor does not have exclusive

control over the return of a debtor's license, but that rather the commission, even after the consent of the creditor, must be satisfied that the debtor as demonstrated his ability to "respond in damages" for liability in the amounts prescribed.[3]

The Utah act further provides, at Section 41-12-16, Utah Code Annotated 1953, as follows:

> "Judgments in excess of the amounts, specified in section 41-12-1, subsection (k) shall, for the purpose of this act only, be deemed satisfied when payments in the amounts so specified have been credited thereon; provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified."

This provision means that should the judgment debtor make payment up to $5,000 in the case of one person for bodily injury or death, $10,000 for more than one person, and $1,000 total property damage, and upon furnishing "proof of financial responsibility" thereafter, the driving privileges may be returned. It further requires that the commission credit towards these totals all payments whether they be applied to what is known as "general" damages or "special" damages. The act, therefore, is not designed to collect the full amount of all judgments obtained against negligent drivers, but only up to the standard of financial responsibility required by the statute.

Section 41-12-17 (R. 7) permits the judgment debtor to apply to the court wherein the judgment was entered to make payment in monthly installments and gives the exclusive discretion over the size and regularity thereof to

[3] 41-12-1(k), U.C.A. 1953. (R. 5)

the court. It further provides that upon the court's entering such an insallment order, and a showing by the judgment debtur of "proof of financial responsibility," the license will be returned. The creditor here is given no control over how much or in what fashion the court orders the judgment debtor to amortize the debt. Presumably, the creditor could be heard by the court at the time of the determination, but the discretion is exclusively the court's.

Section 41-12-13, requiring the creditor to take the affirmative action in order to bring about revocation, in reality, gives the debtor an escape hatch he would not have in the automatic revocation statute, such as the New York act upheld in the Reitz case. As the lower court noted in its opinion, already quoted above:

> "If the forwarding of judgments, remaining unsatisfied for some period, were mandatorily required of clerks, numerous licenses likely would be revoked even though the judgments had in fact been satisfied or the debtors had made at least some informal arrangement or settlement with the creditor. *As a practical matter, the view reasonable could be entertained that the forwarding of copies of unsatisfied judgments at the request of judgment creditors would be a procedure best designed to protect both the public and the licensees within the legitimate objectives of the police power.* There might be differences of opinion as to the means best calculated to carry out the legitimate purposes of the act with due regard to the rights and convenience of the parties involved. It is not the problem of the court to resolve these reasonable differences. *Certainly it cannot be said that such a provision as is here in question necessarily conflicts with the bankruptcy act, if the mandatory forwarding of judgments for action would not do so.* The power to d e c l a r e legislative enactments unconstitutional should be exercised with extreme caution. The court cannot assume that state legislative enactments are

> adopted arbitrarily or without good reason to further some legitimate policy of the state. Highway regulations enacted by a state carry a strong presumption of validity when challenged in court." (Emphasis added)
>
> (R. 22-23.)

In a footnote at page 22 in the Record, the lower court commented on another section of the act as follows:

> "Another provision of the law not now under attack (41-12-5* Utah Code Annotated, 1953) provides that as to the more serious automobile accidents, prior to the entry of any judgment, but upon the basis of a statutory accident report, unless there is evidence that the operators involved have been released from liability, their operating privileges are to be suspended until they furnish specified security, but only if an injured party has submitted evidence of his damages to the commission. The incorporated creditor control also seems primarily for the benefit of the prospective debtor and points up the hardship that might unnecessarily result to him if the suspension were automatic."

All of the above noted provisions demonstrate that the Legislature's primary concern in enacting the law was with the subject of financial responsibility of drivers on the state's highways. It's secondary concern would seem to be protection of the rights of negligent drivers who become thereby judgment debtors. At least the sections noted above redound principally to their benefit.

Summarized, these sections provide that, following a judgment arising from negligent operation of a motor vehicle, the judgment debtor may privately prevail on the judgment creditor to remain silent and thus leave the debtor's license in force. Private settlement of the judgment to the creditor's satisfaction may also result in the

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* The printed record shows the statutory reference to be 41-12-15, and is apparently a misprint, since the section to which the court referred is the one cited above.

creditor's silence and the retention by the debtor of his license. Should the judgment exceed $11,000, if there be more than one judgment creditor suffering both personal and property damage, or should the judgment exceed $6,000 where only one judgment creditor with property damage exists, the debtor may redeem his license by arranging to pay those applicable sums on terms acceptable to the court (and *not* necessarily the judgment creditor) upon an additional showing of "proof of financial responsibility." Finally, following judgment and revocation, the debtor may obtain a return of his license upon a written consent from the creditor, together with a showing of "proof of financial responsibility."

Appellee contends that since this court has upheld an automatic revocation statute, where none of these safeguards and debtor options exist, this statute should be upheld, since it is in effect a more lenient law, and the incidental benefits to the creditor are not so repugnant as to make it unconstitutional.

In considering these benefits to judgment creditors, specifically the creditor-initiating provision (41-12-13), the court below observed its similarity to the complaining-witness situation in criminal prosecutions. The opinion reads:

> "• • • Parties as to whom or against whose interest criminal offenses, punishable under the police power, have been committed, may make complaints before committing magistrates. Unless they do so, ordinarily criminal prosecution, especially with respect to certain types of offenses, may not be set in motion. The requirement of a criminal complaint is largely for the protection of the defendant. The same can be said of the requirements in the act in question that the creditor initiate the process of suspension." (R. 22.)

A logical extension can be made to the argument. In a given criminal prosecution initiated by a complaining witness following a conviction, it is possible that the trial judge exercising his discretion may place a convicted defendant on probation and order that he make full restitution to the injured complaining witness, thereby directly benefiting the party who initiated the action. It could hardly be said, however, that because restitution is possible and personal benefit thus be received, that the basic nature of the criminal statute is thereby changed from a police regulation to private legislation for the benefit of individuals. Appellee submits that the same argument is equally valid with regard to the incidental creditor benefits bestowed by the act here in issue.

(d) To permit appellant the relief sought would frustrate the purpose of the act through the simple expediency of voluntary bankruptcy.

In support of this contention, the language of the majority opinion in the Reitz case is self-explanatory:

> "• • • The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. *The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy*, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety."[4] (Emphasis added.)

[4] P. 37 of 314 U.S.

As was observed in the statement at the beginning of this brief, appellant in his bankruptcy scheduled only the judgments giving rise to his license revocation, his attorney's fees incurred in the defense of the negligence action, and one bill of a finance company in the amount of $502.25. It appears, therefore, in the instant fact situation that appellant was not seeking a discharge in bankruptcy to free himself from the onerous burden of excessive debt. Rather, it appears a transparent effort to circumvent the state's Financial Responsibility Act by the "expedient of voluntary bankruptcy."

CONCLUSION

For foregoing reasons, it is respectfully submitted that the decision of the court below should be affirmed.

Respectfully submitted,

WALTER L. BUDGE
Attorney General
GORDON A. MADSEN
Assistant Attorney General
Attorneys for Appellee
State Capitol
Salt Lake City, Utah